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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 LAURA BUFORD, on behalf of herself and
18 others similarly situated,

19 Plaintiff,

20 vs.

21 MEDICAL SOLUTIONS, L.L.C., a
22 Nebraska limited liability corporation; and
23 DOES 1 through 100, inclusive.

24 Defendants.

Case No.: 4:18-CV-04864-YGR

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

**[Filed concurrently with Declarations of
Zachary M. Crosner and Laura Buford;
[Proposed] Order]**

Date: January 14, 2020

Time: 2:00 p.m.

Place: Courtroom 1, 4th Floor

Hon. Yvonne Gonzalez Rogers

NOTICE OF MOTION

PLEASE TAKE NOTICE that on January 14, 2020 in Courtroom 1, 4th Floor, of the above-captioned Court, located at 1301 Clay St., Oakland, California, the Hon. Yvonne Gonzalez-Rogers presiding, plaintiff Laura Buford will move the Court for preliminary approval of a two part settlement consisting of a proposed class action settlement component to be approved under Fed.R.Civ.P. 23(e), and approval of a second component consting of a proposed settlement under the California Private Attorneys General Act, Cal. Labor Code sections 2698, et seq., under Cal. Labor Code section 2699 (l)(2). The terms of the settlement are contained within the Joint Stipulation of Settlement and Release, filed concurrently herewith as Exhibit A to the Declaration of Zachary M. Crosner. In addition, Plaintiff requests that the Court certify the class described in Section II.40 of the Joint Stipulation; approve the form of class notices and PAGA notice attached as Exhibits A-C to the Joint Stipulation; and set a final approval hearing for June 9, 2020, or the first available date on the Court's calendar thereafter.

This motion will be based on this Notice, the attached Memorandum of Points and Authorities, the Joint Stipulation, the Declarations of Zachary M. Crosner and Laura Buford, the Court's entire file herein, and on such further evidence and argument as may be presented at the hearing.

Dated: December 10, 2019

CROSNER LEGAL, P.C.



ZACHARY M. CROSNER
Attorneys for Plaintiff LAURA BUFORD

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Laura Buford submits the Joint Stipulation of Settlement and Release (“Joint Stipulation”) between herself and Defendant Medical Solutions, L.L.C. to this Court for approval. In the preceding months, the Parties have expended significant time and resources in both formal and informal discovery, followed by protracted settlement discussions and private mediation in an effort to informally resolve Plaintiff’s class action and PAGA representative action claims. The proposed \$1,150,000 non-reversionary settlement consists of two components. The first will resolve on a class basis certain wage and hour claims of approximately 775 individuals employed by Defendant as “traveling nurses” at medical facilities in California operated by Sutter Health.¹ The second component will resolve only certain claims for civil penalties under the California Private Attorneys General Act, Cal. Labor Code sections 2698, et seq. (“PAGA”), related to alleged Labor Code violations involving about 1,330 individuals Defendant employed as “traveling nurses” at medical facilities in California operated by client employers other than Sutter Health.²

Approval of a class action settlement consists of two steps. First, the Court makes a preliminary evaluation of fairness of the settlement. Manual for Complex Litigation, Fourth, § 21.632 (2004). If the proposed settlement falls “within the range of possible approval,” the Court should grant preliminary approval and authorize the parties to give notice of the proposed settlement to the class members. Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982). With respect to the PAGA-only part of the settlement, while Court approval is required under Labor Code section 2699(l)(2), there is no specific mechanism in the PAGA statutes detailing a standard for the approval process. Accordingly, most courts apply the same standards used to evaluate a proposed class settlement. Salazar v. Sysco Central

¹ These individuals are referred to as the “Settlement Class Members,” as defined in Sections II.40-41 of the Joint Stipulation.

² These individuals are the “Settlement Aggrieved Group” or “SAG Members,” as defined in Sections II.34 and 38 of the Joint Stipulation.

1 California, Inc., 2017 WL 1135801, at *3-4 (E.D. Cal. 2017); Delgado v. Market Source,
 2 Inc., 2019 WL 4059850, at *3-4 (N.D. Cal. 2019).

3 As discussed below, in all particulars the proposed settlement falls within the “range
 4 of possible approval” and is potentially fair. Indeed, the settlement is entitled to a
 5 presumption of fairness since it was reached through arm’s-length bargaining between
 6 experienced counsel, after a thorough exchange of formal and informal discovery. The
 7 negotiations were at arms-length and facilitated by an experienced and well-regarded
 8 neutral, the Hon. Jay Gandhi (Ret.), over the course of a full-day mediation session.

9 Accordingly, Plaintiff respectfully quests that the Court: (1) preliminarily approve
 10 the proposed settlement; (2) conditionally certify the class described in Section II.40 of the
 11 Joint Stipulation for settlement purposes only; (3) approve and authorize the mailing of the
 12 proposed notice forms to the Settlement Class Members and SAG Members; and (4) set a
 13 final approval hearing for June 9, 2020, or the Court’s first available date thereafter.

14 **II. STATEMENT OF FACTS**

15 Defendant Medical Solutions, L.L.C. is an Omaha, Nebraska based company that
 16 staffs “Travel Nurses” at various health care facilities around the country. A Travel Nurse
 17 is a licensed RN (or other skilled healthcare professional) who works short term
 18 assignments, usually around 13-16 weeks in duration, that require travel to distant locations
 19 (for example, Plaintiff was a permanent resident of Alabama but worked assignments in
 20 Northern California and elsewhere). Medical Solutions coordinates these assignments by
 21 matching the Travel Nurse with the staffing needs of various hospitals, physicians' offices,
 22 or clinics. Travel Nurses are directly employed by Medical Solutions for these short-term
 23 assignments, i.e., a Travel Nurse may work a 13 week contract, decline the next contract
 24 offered and take a month off, then work another 13 week contract in a different location, etc.
 25 [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 2.]

26 Plaintiff, a Registered Nurse, worked for Medical Solutions as a Travel Nurse from
 27 around November 2014 to September 2017, including several hospital assignments in Marin
 28 and Alameda Counties. The vast majority of Plaintiff’s assignments in California were at

1 facilities owned/operated by Sutter Health, although she also worked an assignment for
2 Kindred Healthcare. [Crosner Decl., ¶ 3.]

3 On May 10, 2018, Plaintiff filed a putative class action against Defendant in
4 Alameda County Superior Court (Case No. RG18904415), and subsequently filed a First
5 Amended Complaint on June 14, 2018. [Crosner Decl., ¶ 4.] The FAC, which remains
6 the operative pleading, alleges the following claims:

- 7 • An unpaid wage claim based on Defendant's alleged failure to pay for time
8 associated with missed meal periods, as Plaintiff contends Defendant had an
9 "auto-deduct" policy whereby it would automatically dock Plaintiff and others for
10 30-minute meal periods that were not taken;
- 11 • A meal period claim arising out of Defendant's alleged failure to maintain a
12 compliant policy instructing and authorizing its Class Members to take all
13 required meal breaks and corresponding failure to obtain required written waivers
14 for second meal breaks, as well as de facto violations such as late meal breaks and
15 meal breaks lasting less than 30 minutes. Plaintiff also alleges Defendant failed
16 to compensate the Class Members a one hour premium for missed, late or
17 interrupted meal breaks;
- 18 • A rest period claim arising out of Defendant's alleged de facto failure to provide
19 off duty rest breaks, and failing to maintain a mechanism for compensating the
20 Class Members a one hour premium for missed, late or interrupted rest breaks;
- 21 • Derivative wage statement, waiting time, and unfair competition claims based on
22 the foregoing alleged violations; and
- 23 • Claims under PAGA based on the violations alleged above.³

24 [FAC, at ¶¶ 45-108; Docket No. 1-1.] Plaintiff asserted these claims on behalf of a
25 proposed class of all non-exempt employees of Defendant who worked in California at
26

27 ³ Plaintiff also alleged a claim for failure to reimburse certain business expenses but ultimately did
28 not uncover any facts supporting that claim, and further Defendant deemed all travel, housing and
meal/living expenses part of the Travel Nurses overall compensation (*e.g.*, Clark v. AMN
Services, Inc., 2018 WL 3357467 (C.D. Cal. June 26, 2018), not expenses. [Crosner Decl., ¶ 29.]

1 any time since May 10, 2014. [Id. at ¶ 34.]

2 Defendant then removed the case to this Court under the Class Action Fairness
3 Act, 28 U.S.C. § 1332(d). [Docket No. 1.] The Parties subsequently exchanged initial
4 disclosures, participated in a Rule 16 conference with the Court, and propounded and
5 responded to extensive written discovery followed by lengthy meet and confer
6 discussions regarding same. Ultimately, the Parties agreed to mediate and also agreed on
7 a protocol for exchanging additional documents and information beforehand.
8 Accordingly, both formally and informally, Defendant produced time and pay records for
9 a subset of the class members/aggrieved employees, and produced various documents
10 reflecting its wage and hour policies and practices during the class period, exemplars of
11 applicable wage statements, employee handbooks, sample meal period waiver
12 agreements, sample arbitration agreements, etc., as well as extensive information on the
13 number of putative class members and potentially aggrieved employees, the number of
14 work weeks and pay periods, average hourly rates of pay, etc. [Crosner Decl., ¶ 5.]

15 Before the mediation, Plaintiff's counsel also retained Berger Consulting Group to
16 analyze the payroll data informally produced by Defendant in preparation for the
17 mediation. After reviewing Defendant's wage and hour policies and practices, and
18 analyzing Defendant's time and pay records with the consulting expert's assistance,
19 Plaintiff's counsel was able to evaluate the probability of class certification, success on
20 the merits, and Defendant's maximum monetary exposure for all claims, and prepare a
21 damages analysis prior to mediation. Plaintiff's counsel also investigated the applicable
22 law regarding the claims and defenses asserted in the litigation. Thus, Plaintiff and her
23 counsel are familiar with the facts and the legal issues raised by the pleadings and were
24 able to act intelligently in negotiating the settlement. [Crosner Decl., ¶ 6; Exh. B.]

25 On August 28, 2019, the Parties participated in a private mediation with a highly-
26 regarded professional neutral the Hon. Jay Gandhi (Ret.), a former federal Magistrate
27 Judge. The settlement negotiations were at arm's length and, although conducted in a
28 professional manner, were adversarial. The parties went into mediation willing to

1 explore the potential for a settlement of the dispute, but each side was also prepared to
 2 litigate their position through trial and appeal if a settlement had not been reached. After
 3 extensive negotiations and discussions regarding the claims and defenses in this action,
 4 as well as the risks involved in further litigation, the Parties reached a tentative
 5 agreement, the material terms of which are encompassed within the Joint Stipulation.
 6 [Crosner Decl., ¶ 7.] A true and correct copy of the Joint Stipulation is attached to the
 7 Crosner Declaration as Exhibit A.

8 Plaintiff's counsel has conducted a thorough investigation into the facts of this
 9 case and, based on the foregoing discovery and their own independent investigation and
 10 evaluation, is of the opinion that the Settlement is fair, reasonable, and adequate and is in
 11 the best interests of the Settlement Class Members in light of all known facts and
 12 circumstances, including but not limited to the risk of significant delay and the defenses
 13 that could be asserted by Defendant both to certification and on the merits, trial risk, and
 14 appellate risk. Plaintiff's counsel is further of the opinion that the PAGA-only
 15 component of the proposed settlement is likewise fair, reasonable and adequate, and
 16 advances the purposes underlying the PAGA statutes. [Crosner Decl., ¶ 8.]

17 **III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

18 **A. Proposed Settlement Terms.**

19 In total, Defendant will fund a settlement in the amount of \$1,150,000 (the "Gross
 20 Settlement Amount"). The Gross Settlement Amount is inclusive of all payments
 21 contemplated under the Settlement and accounts for: (1) all Settlement Awards to both the
 22 Settlement Class Members and SAG Members; (2) the Plaintiff's Incentive Award not to
 23 exceed \$7,500; (3) civil penalties to the California Labor Workforce and Development
 24 Agency of \$157,500 in satisfaction of PAGA; (4) settlement administration costs not to
 25 exceed \$25,000, but which are estimated to be no more than \$19,500; (5) reimbursement of
 26 litigation costs not to exceed \$15,000; and (6) attorneys' fees not to exceed \$287,500 (25%
 27 of the Gross Settlement Amount). No money will revert to Defendant.

28 /////

1 **1. Calculation of Settlement Awards**

2 As to the Class component of the Settlement, each Settlement Class Member who
3 does not opt-out will be entitled to a pro rata share of the Net Settlement Amount based upon
4 his or her total weeks worked in California during the Class Period. Plaintiff estimates that,
5 after taking out all deductions described above, the Settlement Awards to the Settlement
6 Class Members will average about \$795. [Crosner Decl., ¶ 9].

7 As to the PAGA-only component of the Settlement, the SAG Members each will be
8 entitled to a pro rata share of the PAGA civil penalties allocated to the SAG claims based
9 on the number of weeks worked in California during the SAG Period.⁴ The estimated net
10 recovery for the SAG Members will average about \$38. [Id.]

11 As addressed below, the Parties believe a pro rata distribution based on the number
12 of weeks worked by each Authorized Claimant during the Class Period/SAG Period will
13 fairly allocate the settlement proceeds in light of the legal theories asserted and the evidence
14 adduced prior to mediation. A pro rata distribution formula based on work weeks offers a
15 reasonable approximation of potential damages as each Authorized Claimain was subject to
16 the alleged failure to pay wages due to an auto-deduct policy, the alleged improper meal
17 break policies, and the alleged de facto meal and rest break violations. Since Settlement
18 Class and SAG Members who worked more assignments in California presumably suffered
19 from more alleged violations over time, this formula likewise accounts for such individuals
20 likely having more potential damages. [Crosner Decl., ¶ 10.]

21 **2. Nature And Method Of Notice**

22 Notice packages will be mailed by the Claims Administrator to the last-known home
23 address of all Settlement Class and SAG Members by first-class US mail within thirty
24 business days of entry of the Court's Order of Preliminary Approval. Subject to the Court's
25 approval, there are separate Notice forms for the Settlement Class and SAG, with a third
26 Notice form for those individuals who are part of both the Settlement Class and SAG. Notice
27 packages will be mailed to each individual's last known address from Defendant's records,

28

⁴ Medical Solutions paid weekly so the work weeks and pay periods are the same.

1 and the Claims Administrator will check all addresses against the National Change of
 2 Address database prior to mailing. The Claims Administrator will resend notice packages
 3 returned with a forwarding address, and will conduct a skiptrace or similar search for a better
 4 address if no forwarding address is provided. [Crosner Decl., ¶ 11.]

5 **3. Objection & Opt-Out Procedures**

6 The notice packages for all Settlement Class Members will notify them of their right
 7 to opt-out of the proposed class portion of the settlement by submitting a signed exclusion
 8 form within forty-five days after the Claims Administrator initially mails (or re-mails) their
 9 notice package. Those who opt-out will be excluded from the class only and will not be
 10 bound by Class Release contained in the Joint Stipulation. Additionally, the notice will
 11 inform class members of their right to object to the class component of the settlement, and
 12 detail the procedure and deadline for doing so. [Crosner Decl., ¶ 12.]

13 SAG Members will not be afforded a right to opt out or object to the PAGA-only
 14 component of the settlement, and likewise the Class-SAG Members will only be permitted
 15 to opt out of or object to the class portion of the settlement. [Id.]

16 **4. The Claims Administrator**

17 Subject to the Court's approval, the Parties propose that CPT Group, Inc. ("CPT")
 18 serve as the Claims Administrator. Before agreeing on CPT, the Parties solicited bids from
 19 two other administration firms, and ultimately selected CPT based on a combination of cost
 20 and past experience.⁵ Claims administration duties will include preparing, issuing, and
 21 mailing any and all notices; receiving and evaluating any disputes regarding work week
 22 information and estimated settlement awards; computing, processing, reviewing, and
 23 mailing individual settlement payments; generating settlement payment checks and related
 24 tax reporting forms; preparing tax returns and other required filings; preparing and
 25 submitting a claims administration declaration to the Court on final approval; administering
 26 the process regarding unclaimed checks; administering disbursements from the Net

27 _____
 28 ⁵ Plaintiff's counsel has worked with CPT on approximately four other class and PAGA
 settlements in the past two years. [Crosner Decl., ¶ 13.]

1 Settlement Amount; generating checks to class counsel for attorney's fees and costs, to
 2 Plaintiff for her incentive award, and to the LWDA for the State's share of PAGA civil
 3 penalties. CPT's estimated costs at this time are \$19,500.00. [Crosner Decl., ¶ 13; Exh. C.]

4 **5. Attorneys' Fees And Litigation Expenses**

5 Per the Joint Stipulation, Plaintiff's counsel may request attorneys' fees on a common
 6 fund basis not to exceed 25% of the Gross Settlement Amount (\$287,500), consistent with
 7 the Ninth Circuit "benchmark" fee in common fund cases. Plaintiff's counsel may also
 8 request reimbursement of actual costs not to exceed \$15,000. Any portion of the attorney's
 9 fees or costs not awarded by the Court shall revert to the Net Settlement Amount for
 10 distribution to the Settlement Class Members. Plaintiff's counsel's estimated lodestar
 11 (through the filing of this motion) and costs incurred are summarized in the Crosner
 12 Declaration, filed herewith. Counsel will provide the Court with a final lodestar calculation
 13 and final tabulation of costs in the motion for attorney's fees. [Crosner Decl., ¶ 14; Exh. D.]

14 **6. Incentive Award For Class Representatives**

15 Subject to this Court's approval, Plaintiff will seek an incentive award of \$7,500,
 16 intended to compensate her for personally undertaking the obligations and risks associated
 17 with prosecuting the action. Plaintiff also executed a broader general release of any
 18 remaining individual claims she may personally have against Defendant. Any portion of the
 19 Incentive Award not approved by the Court shall revert to the Net Settlement Amount for
 20 distribution to the Settlement Class Members and shall not revert to the Defendant. [Crosner
 21 Decl., ¶ 15; Declaration of Laura Buford, ¶¶ 2-9.]

22 **7. Releases**

23 The proposed Releases contained in the Joint Stipulation are appropriately narrow in
 24 scope and only release claims associated with the specific factual allegations made in
 25 Plaintiff's First Amended Complaint, or claims that could have been asserted based on those
 26 allegations.

27 Settlement Class Members will release only the causes of actions and/or claims
 28 asserted in the First Amended Complaint and that could have been asserted based on the

1 facts and circumstances alleged therein. The SAG Members will release only claims for
 2 violation of PAGA that were or could have been alleged based on the facts alleged in the
 3 FAC, consistent with Arias v. Superior Court, 46 Cal.4th 969, 985-86 (2009) (judgment in
 4 a PAGA case is “binding not only on the named employee plaintiff but also on government
 5 agencies and any aggrieved employee not a party to the proceeding”). [Crosner Decl., ¶ 16.]

6 Lastly, certain claims are expressly excluded from both the Class Release and the
 7 SAG Release. These claims (the “Dittman Reserved Claims”) relate to a certified class action
 8 pending against Defendant styled Dittman v. Medical Solutions, L.L.C., et al., Eastern
 9 District of California Case No. 2:17-cv-01851-MCE-CKD (“Dittman”). The Dittman matter
 10 alleges claims for (1) for unpaid overtime wages; and (2) derivative claims under PAGA,
 11 Business & Professions Code §§ 17200, *et seq.*, and Labor Code § 203, all based on
 12 Defendant’s alleged failure to properly calculate the class members’ regular rate of pay for
 13 purposes of determining the proper overtime rate. [Id.]

14 **B. The Settlement Meets the Requirements for Preliminary Approval as to**
 15 **the Class Claims, and the Requirements for Approval as to the SAG**
 16 **Claims**

17 The policy of the federal courts is to encourage settlement before trial. Franklin v.
 18 Kaypro Corp., 884 F.2d 1222, 1225 (9th Cir. 1989). “Litigation settlements offer parties
 19 and their counsel relief from the burdens and uncertainties inherent in trial. . . . The
 20 economics of litigation are such that pretrial settlement may be more advantageous for both
 21 sides than expending the time and resources inevitably consumed in the trial process.” Id.

22 In class action cases, the district court must approve any settlement. Fed.R.Civ.P.
 23 23(e). As explained in the Manual for Complex Litigation, Fourth, court approval of a class
 24 action settlement is a two-step process. First, counsel submit the proposed terms of the
 25 settlement to the Court, and the Court makes a preliminary fairness evaluation. If the
 26 preliminary evaluation of the settlement does not disclose a basis to doubt its fairness or
 27 other obvious deficiencies, the Court directs that notice be given to the class and sets a final
 28 fairness hearing. Manual for Complex Litigation, Fourth, § 21.632 (2004).

1 As to the PAGA-only portion of the proposed settlement, the statute requires the
 2 Court to “review and approve any settlement of any civil action filed pursuant to this part.”
 3 Labor Code § 2699(l)(2). Since there is no statutory authority setting forth a specific standard
 4 for reviewing a PAGA settlement, most courts apply the standards applicable to review and
 5 approval of a class action settlement and look to whether, under all the circumstances, the
 6 settlement is fair, reasonable and adequate. A court may also examine whether the proposed
 7 PAGA relief is genuine and “meaningful” and furthers the purposes of the statute. Salazar,
 8 2017 WL 1135801, at *3-4; Delgado, 2019 WL 4059850, at *3-4.

9 The “universal standard” in evaluating the fairness of a settlement under Fed.R.Civ.P.
 10 23(e) is whether the settlement is “fundamentally fair, adequate and reasonable.”
 11 Fed.R.Civ.P. 23(e)(2); Officers for Justice v. Civil Service Comm’n, 688 F.2d 615, 625 (9th
 12 Cir. 1982). “[T]he court’s intrusion upon what is otherwise a private consensual agreement
 13 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach
 14 a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
 15 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
 16 reasonable and adequate to all concerned.” Id. As the Ninth Circuit recognizes, “the very
 17 essence of a settlement is compromise.” Id. at 624. “[I]t is the very uncertainty of outcome
 18 in litigation and avoidance of wasteful and expensive litigation that induce consensual
 19 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
 20 measure of what might have been achieved by the negotiators.” Linney v. Cellular Alaska
 21 Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998) citing Officers for Justice, 688 F. 2d at
 22 625. Even if a proposed settlement amounts to a fraction of the potential recovery, this does
 23 not mean the settlement is necessarily inadequate. Linney, 151 F.3d at 1242.

24 Preliminary approval should be granted if the proposed settlement falls “within the
 25 range of possible final approval.” Gautreaux, 690 F.2d at 621 n.3; Conte & Newberg,
 26 Newberg on Class Actions (4th ed. 2002), § 11.25, at pp. 38-39. Stated another way,
 27 preliminary approval is “a determination that there is what might be termed ‘probable cause’
 28

1 to submit the proposal to class members and hold a full-scale hearing as to its fairness.” In
 2 re: Traffic Executive Ass’n-Eastern Railroads, 627 F.2d 631, 634 (2d Cir. 1980).

3 A proposed settlement is presumed to be fair when (1) it is reached through arm’s-
 4 length negotiations, (2) the putative class is represented by experienced counsel, and (3) the
 5 parties have conducted sufficient discovery. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396
 6 F.3d 96, 116 (2d Cir. 2005). Here, all of the factors giving rise to a presumption of fairness
 7 exist. First, the proposed settlement was the product of arm’s-length, non-collusive
 8 negotiations overseen by a well-respected, independent mediator. [Crosner Decl., ¶ 7.]
 9 Second, the class is represented by experienced counsel. [Crosner Decl., ¶¶ 37-43.] Third,
 10 the parties exchanged a significant amount of information, both formally and informally,
 11 such that plaintiff and her counsel are able to make an informed recommendation about the
 12 settlement. [Crosner Decl., ¶¶ 5-6.] Thus, the settlement is presumed to be fair.

13 In evaluating a class settlement, the district court should also weigh the following
 14 factors: “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
 15 duration of further litigation; the risk of maintaining class action status throughout the trial;
 16 the amount offered in settlement; the extent of discovery completed and the stage of the
 17 proceedings; the experience and views of counsel; the presence of a governmental
 18 participant; and the reaction of the class members to the proposed settlement.” Hanlon v.
 19 Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). The district court should satisfy itself
 20 that the settlement is not the product of collusion between the plaintiff and the defendant.
 21 Class Plaintiffs v. Seattle, 955 F.2d. 1268, 1290 (9th Cir. 1992). However, “[a]t the
 22 preliminary approval stage, some of the factors cannot be fully assessed. Accordingly, a full
 23 fairness analysis is unnecessary.” Litty v. Merrill Lynch & Co., 2015 WL 4698475, *8 (C.D.
 24 Cal. Apr. 27, 2015). Rather, the court need only decide whether the settlement is potentially
 25 fair, Acosta v. Trans Union, LLC, 243 F.R.D. 377, 386 (C.D. Cal. 2007), in light of the
 26 strong judicial policy in favor of settlement of class actions. Class Plaintiffs, 955 F.2d at
 27 1276.

1 Here, except for the absence of a governmental participant, each factor weighs in
2 favor of approving both the class and PAGA-only portions of the settlement.

3 **1. The Strength of Plaintiff's Case**

4 Prior to reaching this settlement, Plaintiff's counsel conducted both formal and
5 informal discovery and investigation into the claims alleged by Plaintiff, including, among
6 other things, reviewing and analyzing handbooks and other policy documents, reviewing
7 and analyzing time and payroll data produced by Defendant, and preparing a damages
8 analysis with the assistance of a retained expert. Plaintiff's counsel's calculations are based
9 on data from Defendant including class size and number of PAGA aggrieved employees
10 (total current and former employees), pay period data, average hourly rate of pay, time
11 records, pay records, and policy documents. In addition, Plaintiff's counsel has investigated
12 the applicable law regarding the claims and defenses to the claims asserted in the litigation.
13 Thus, Plaintiff and her counsel were able to act intelligently and effectively in negotiating
14 the proposed Settlement. [Crosner Decl., ¶¶ 5-6.] Based on this investigation, discovery and
15 analysis, Plaintiff and her counsel evaluated the strengths and weaknesses of her claims as
16 follows.

17 On the "auto-deduct" issue, Plaintiff contends there are numerous instances in class
18 member time sheets where there is no record of a meal period, yet the time and payroll
19 records reflect a 30-minute deduction for a meal period not taken. To Plaintiff, this strongly
20 suggests Defendant was automatically deducting for a 30 minute meal period regardless of
21 whether the time records confirmed the break was actually taken, which potentially results
22 in employees not being paid for 30 minutes of work time. Under California law, an unlawful
23 failure to pay wages in violation of the Wage Orders and Labor Code requires that: (1)
24 Plaintiff performed work for the employer; (2) Plaintiff worked hours for which he or she
25 was not paid (or was paid less than minimum wages); and (3) the amount of wages owed.
26 Additionally, the employer must have actual or constructive knowledge of the off the clock
27 work. White v. Starbucks Corp., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007). Plaintiff's
28

1 experts estimated a potential violation rate around 25% on this issue, and loss of pay for
2 around potential 8,550 hours across the class. [Crosner Decl., ¶ 19.]

3 Defendant countered that in many instances actually took their meal break even if not
4 reflected on the time sheets and, accordingly, class certification is not appropriate because
5 individual inquiries would be necessary to determine this question. For the same reasons,
6 Defendant contended the claim would fail on the merits because it would be difficult for
7 Plaintiff to show Defendant's actual or constructive knowledge that a particular class
8 member worked through a specific lunch period. On balance, while Plaintiff believes this
9 is one of her stronger claims since the burden of proof would shift to Defendant to show
10 unrecorded meal breaks were actually received,⁶ it is one of Plaintiff's smallest claims and
11 represents only a modest part of the potential damages and penalties. [Crosner Decl., ¶ 20.]

12 On the meal break claims, Plaintiff focused primarily on Defendant's failure to ensure
13 Plaintiff and the Settlement Class and SAG Members received a second meal period on shifts
14 lasting longer than 10 hours. Review of the records provided by Defendant showed about
15 80% of the shifts worked by the Settlement Class and SAG Members were longer than 10
16 hours, which is consistent with Defendant's internal policy providing the "standard"
17 schedule for Travel Nurses is three 12 hour shifts per week. [Crosner Decl., ¶ 21.] Under
18 California law, Defendant then was required to provide the Travel Nurses with a second
19 meal period during these long shifts. IWC Wage Order 5-2001, § 11(A); Lab. Code § 512.
20 Workers in the healthcare industry, however, "who work shifts in excess of eight (8) total
21 hours in a workday may voluntarily waive their right to one of their two meal periods," via
22 a written waiver signed by the employee. IWC Wage Order 5-2001, § 11(D).

23 Plaintiff and the substantial majority of her co-workers did not enter into the
24 mandatory written waiver of a second meal break, and information from Defendant
25 suggested only about 15% of the affected Travel Nurses executed the mandatory written
26 waiver. Thus, for the bulk of these individuals, Plaintiff contends she will merely need to

27 _____
28 ⁶ Defendant's failure to maintain accurate records gives rise the rebuttable presumption articulated
by the California Supreme Court that "no meal period was provided." Brinker Restaurant Corp. v.
Superior Court, 53 Cal.4th 1004, 1053 (2012).

1 look to the written time sheets to see if Settlement Class and SAG Members took their second
2 meal periods on these longer shifts, and then look to the payroll records to see if Medical
3 Solutions paid the premium wage in lieu of the missed meal. Next, review of the time
4 records produced showed additional potential de facto meal period violations for meals
5 provided late in the class member/aggrieved employee's shifts, or that lasted less than 30
6 minutes, in violation of the Labor Code and Wage Orders. These de facto violations,
7 however, did not significantly add to the potential damages since an employee is entitled to
8 only one premium payment per shift regardless of how many violations occur. [Crosner
9 Decl., ¶ 22]

10 Here, Defendant again argued that in many instances the class members took a second
11 meal break even if not reflected on the time sheets and Plaintiff would not be able to certify
12 this issue because individual inquiries would predominate in resolving that question.
13 Defendant also contended it maintained a fully-compliant meal break policy at all times, and
14 it always provided the Settlement Class and SAG Members with the opportunity to take a
15 second meal break and thus met the requirements imposed by California law. Per Defendant,
16 if individuals did not take a second meal period, it was in violation of company policy and,
17 once again, a multitude of individual inquiries would be necessary to determine if an
18 individual may have missed a meal break by personal choice or for some other reason.
19 Lastly, Defendant noted it did pay the mandated premium wage for missed meal periods at
20 least some of the time, which Plaintiff confirmed in her review of the payroll and time
21 records produced. While Plaintiff believes Defendant's records and her testimony and that
22 of her co-workers will support this claim, she nevertheless must acknowledge Defendant has
23 a viable and multi-layered defense. [Crosner Decl., ¶ 23.]

24 On the rest break claim, Plaintiff's claim focused exclusively on de facto violations
25 for missed rest breaks, and pointed to employee time records that specifically noted a missed
26 rest break. Plaintiff's expert's review of the time records provided revealed a violation rate
27 of around 6% where the time sheets had a handwritten notation of "missed break" or similar
28 language. [Crosner Decl., ¶ 24.]

1 Defendant advanced several defenses to this claim. First, Defendant argued its
 2 written rest period policy is fully compliant and expressly authorized all rest periods
 3 required under California law. Defendant further argued that, since it is not required to
 4 record rest periods, any evidence of a failure to authorize rest periods and/or
 5 discouragement from taking rest periods would be purely anecdotal and may not result in
 6 certification of Plaintiff's rest period claims. Defendant also contended it is only liable if
 7 Plaintiff can prove, on a shift-by-shift basis, that Class Members actually did not take a
 8 rest break. This arguably would have made class certification more difficult and/or
 9 rendered trial of the PAGA claims unmanageable. Therefore, a sharp compromise of this
 10 theory of rest period liability was in order and, as noted, the provable violation rate was
 11 nominal in any event. [Crosner Decl., ¶ 25.]

12 Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of
 13 the underlying unpaid wage and meal/rest break claims and, accordingly, they would
 14 essentially rise or fall with Plaintiff's success or failure on her primary claims. Further,
 15 Plaintiff had to account for the discretionary nature of such awards and the "good faith" and
 16 other defenses available to Defendant. On the Section 226 wage statement claims, Defendant
 17 looked to Maldonado v. Epsilon Plastics, Inc., 22 Cal.App.5th 1308 (2018), where the Court
 18 held a wage statement claim fails as a matter of law when it is based on the alleged failure
 19 to show all wages purportedly "earned" but the wage statements accurately reflected the
 20 wages paid to the employee. [Crosner Decl., ¶ 26.] The Maldonado court agreed with the
 21 employer's "commonsense position that the pay stubs were accurate in that they correctly
 22 reflected . . . the pay received" and held that a later adjudicated failure to pay wages "does
 23 not mandate that [employees] also receive penalties for the wage statements which
 24 accurately reflected the compensation" they were paid at the time. Id.

25 As to Section 203 waiting time penalties, Defendant argued Plaintiff and the Class
 26 Members may not obtain waiting time penalties as a result of the alleged meal and rest
 27 periods claims, but only the unpaid wage cause of action, because meal and rest premiums
 28 are not considered "wages." In Murphy v. Kenneth Cole Productions, Inc., 40 Cal.4th 1094

(2007), the California Supreme Court characterized the extra hour paid for meal period violations as a 'premium wage' rather than a penalty but, in Kirby v. Immoos Fire Protection, Inc., 54 Cal.4th 1244 (2012), the same Court held a meal period violation is not tied to the nonpayment of wages, rendering the issue uncertain. Defendant also raised a good faith defense to the waiting time penalties as it applies to both meal/rest periods and underpaid overtime premiums. Amaral v. Cintas Corp. No. 2,163 Cal.App.4th 1157, 1203-4 (2008) (employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). [Crosner Decl., ¶ 27.]

Finally, on the PAGA claims of both the Settlement Class Members and SAG Members, in addition to the merits defenses addressed above, Plaintiff recognizes that, because the issues here are fairly contested, there is a real possibility the Court might decline to award PAGA penalties even if she prevailed on the merits. [Crosner Decl., ¶ 28.] In this regard, several recent cases have resulted in no award of PAGA civil penalties. E.g., In re: Taco Bell Wage and Hour Actions, 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 8, 2016) (PAGA penalties denied after trial); Makabi v Gedalia, 2016 Cal.App. Unpub. LEXIS 1489 (Mar. 2, 2016) (court found in favor of plaintiffs on Labor Code claims but declined to award penalties).

Alternatively, the Court has broad discretion to reduce the amount of PAGA civil penalties awarded “based on the facts and circumstances of a particular case” if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Plaintiff is acutely aware of a number of recent PAGA cases resulting in nominal penalty awards via settlement or even after the plaintiff prevailed on the merits at trial. E.g., Cotter v. Lyft, Inc., 193 F.Supp.3d 1030 (N.D. Cal. 2016) (PAGA settlement was fair and reasonable even though it resulted in a 97.5% reduction from the maximum penalty); Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018) (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); Fleming v. Covidien, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (court reduced

1 potential PAGA penalties by over 82% after a bench trial). Accordingly, Plaintiff applied a
2 significant discount to the value of the PAGA claims. [Crosner Decl., ¶ 28.]

3 The settlement obviates the significant risk that this Court may deny certification of
4 all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all
5 or some of the claims, continued litigation would be expensive, involving a trial and possible
6 appeals, and would substantially delay and reduce any recovery by the Settlement Class
7 Members. Similarly, as to the SAG Members' PAGA claims, the Court could easily rule
8 such claims are unmanageable for the reasons discussed above, or ultimately exercise its
9 discretion to reduce any award of civil penalties significantly. While Plaintiff is confident
10 in the merits of her claims, legitimate controversies exist as to each cause of action and
11 Defendant has multiple potential defenses to both class certification and on the merits.
12 Plaintiff also recognizes that proving the amount of wages and penalties due to each
13 individual would be a lengthy, expensive, and uncertain task.

14 Although Plaintiff believes she could have prevailed, there were no guarantees. When
15 the risks of prevailing at both certification and trial are factored into the equation, as to both
16 the class and PAGA-only claims, the settlement value is reasonable and supported. The
17 \$1,150,000 settlement amount represents a significant percentage of Defendant's overall
18 potential exposure. [Crosner Decl., ¶¶ 17-18.] Also, the assigned certification probabilities
19 far exceed the rate of certification in contested motions in California over the past 5 years,
20 based upon data available through the California Courts website. See Findings of the Study
21 of California Class Action Litigation, 2000-2006, available at
22 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of
23 all class actions were certified either as part of a settlement or as part of a contested
24 certification motion). In other words, well under 20% of all class actions are certified by
25 way of contested motion. The probabilities are also in line with reductions of civil penalties
26 awarded in PAGA cases, including many that have gone to trial. More significantly, each
27 Settlement Class Member is eligible to receive an average net benefit of approximately \$795,
28

1 while each SAG Member will receive approximately \$38 as their share of the civil penalties.
2 [Crosner Decl., ¶ 9.]

3 In sum, when the risks of litigation, the uncertainties involved in achieving class
4 certification, the potential applicability of hundreds of arbitration agreements, the burdens
5 of proof necessary to establish liability, the probability of appeal of a favorable judgment,
6 etc., all are accounted for, the total settlement amount of \$1,150,000 is within the “ballpark”
7 of reasonableness both overall and as to both component parts, and approval of the
8 settlement is appropriate.

9 **2. The Risk, Expense, Complexity and Likely Duration of Further**
10 **Litigation**

11 Absent settlement, litigation of this matter will remain highly contentious leading up to
12 class certification and potentially beyond. Without the proposed settlement, the parties
13 would be required to litigate class certification, as well as the ultimate merits of the case - a
14 process that is long, complex, and expensive. If the settlement is not approved, Defendant
15 will oppose class certification and conduct further dispositive motion practice to defend
16 against Plaintiff’s claims. Furthermore, even if Plaintiff secured and maintained class
17 certification and prevailed on the merits, she almost certainly would face a protracted
18 appellate process. Settlement of this matter will conserve the resources of both the Court
19 and the parties, and as a result Plaintiff submits this factor weighs heavily in favor of
20 preliminary approval. [Crosner Decl., ¶ 31.]

21 **3. The Risk of Maintaining Class Action Status Throughout the Trial**

22 Plaintiff and her counsel strongly believe their lawsuit is maintainable as a class
23 action. However, there are risks associated with certifying a class in the first instance, and
24 as with any certified class action there is always the potential for future decertification
25 following merits discovery.

26 This is particularly true in this matter given the nature of Defendant’s business and
27 the fact that, as a staffing company, its employees worked for a number of different clients
28 and at some 250 medical facilities throughout California. While Plaintiff contends there are

1 common themes applicable to all Class Members based on Defendant's own policies, she
2 also recognizes the very real possibility that the Court might agree with Defendant and find
3 insurmountable individual issues are present given the sheer number of clients and dozens
4 of locations across California where Medical Solutions staffed the Settlement Class and
5 SAG Members. [Crosner Decl., ¶ 31.]

6 In fact, it is this issue that ultimately resulted in the class-wide portion of the proposed
7 settlement being limited only to individuals who worked assignments for Sutter Health
8 rather than the broader class definition alleged in the FAC. Defendant argued forcefully it
9 would not consider settling the potential claims of individuals who worked at non-Sutter
10 Health facilities on a class basis because Plaintiff could not adequately represent those
11 individuals since she worked almost exclusively at Sutter Health facilities,⁷ and the impact
12 of the various wage and hour policies and procedures of other client employers on Plaintiff's
13 claims would both create myriad individual issues and render merits litigation and trial
14 unmanageable. While Plaintiff contended procedural mechanisms such as subclassing or
15 sampling and statistical analysis could overcome these arguments, as a compromise the
16 Parties ultimately agreed to limit the settlement class as defined in the Joint Stipulation.
17 [Crosner Decl., ¶ 32.]

18 Next, Defendant provided information establishing hundreds of Settlement Class
19 Members signed arbitration agreements and, accordingly, could be required to arbitrate their
20 claims individually rather than participate in a class action. This development further
21 complicated an already difficult path to class certification, and significantly influenced
22 Plaintiff's evaluation of the case. [Crosner Decl., ¶ 33.]

23 At bottom, Plaintiff acknowledges Medical Solutions' arguments against class
24 certification present considerable risk, and consequently this factor suggests settlement is
25 preferable to continued litigation.

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28 ⁷ As noted, Plaintiff did work one assignment for Kindred Healthcare. Defendant, however,
provided information showing that only 2 other individuals were staffed with that client in
California during the Class Period.

4. The Amount Offered in Settlement

Defendant has agreed to settle the action for a Gross Settlement Amount of \$1,150,000, which amount is eminently reasonable in light of Defendant's significant defenses to certification of the alleged claims, the potentially applicable arbitration agreements, and additional defenses on the merits. Through the extensive amount of information exchanged by the parties, Plaintiff weighed the risks of continued litigation against the benefits of the proposed settlement and determined it to be more than reasonable.

A settlement is not judged against what plaintiff might recover had she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. Linney, 151 F.3d at 1242; White v. Experian Information Solutions, Inc., 803 F.Supp.2d 1086, 1098 (C.D. Cal. 2011) (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); see also Wershba v. Apple Computers, Inc. 91 Cal.App.4th 224, 246, 250 (2001) ("Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.").

In determining whether the amount offered in settlement is fair, a court should compare the settlement amount to the parties' estimates of the maximum amount of damages recoverable in a successful litigation. In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000). Using the pre-mediation formal and informal production of payroll data, time data, and various documents evidencing Defendant's wage and hour policies and procedures, Plaintiff's counsel estimated possible damages based on various theories of liability. Using that data, Plaintiff ran various calculations under different theories of liability and estimated Medical Solutions' likely exposure at approximately \$3,531,650 on the Class Members' claims, and about \$4,441,000 in potential civil penalties for the PAGA-only claims of the SAG Members. [Crosner Decl., ¶¶ 17-18.]

1 Thus, Plaintiff estimated the maximum potential recovery at about \$7,975,000 and
2 the \$1,150,000 settlement amount is approximately 15% of the theoretical maximum
3 possible recovery. On a net basis, the amount that will be available for distribution to the
4 Settlement Class Members represents about 17% of the class maximum recovery, and the
5 amount allocated to civil penalties on the SAG Members' claims is about 4.5% of the
6 maximum recovery. [Crosner Decl., ¶¶ 17-18, 34.] These calculations, however, do not
7 apply any risk adjustment to Plaintiff's claims to account for Defendant's multiple factual
8 and legal defenses - of which there are many.

9 As addressed above, on the class claims, Plaintiff faced the risk that some or all of
10 the claims would not be certified for class treatment, that a certified class could be
11 decertified, or that a jury would decide some or all of the claims lacked merit.
12 Additionally, as Plaintiff subsequently learned, a majority of class members entered into
13 arbitration agreements with Defendant and consequently the class size potentially could be
14 cut by some two-thirds. Similarly, Plaintiff discounted the potential PAGA penalties for
15 several reasons -- as discussed above, the Court possesses wide discretion to reduce such
16 penalties, and many recent PAGA cases have resulted in nominal penalty awards even after
17 plaintiff prevailed on the merits. Further, Defendant had strong arguments that trial of the
18 PAGA claims would have been unmanageable in light of the overall number of client
19 employers and locations where the SAG Members were staffed.

20 And, as with any case, a settlement discount was warranted to account for the fact
21 that continued litigation would have resulted in increased costs and attorney's fees, and
22 would have resulted in significant delay while the parties fought over class certification,
23 merits discovery and trial (assuming certification), and potential appeals, all of which
24 would not necessarily result in conferring significant additional benefit to the class.

25 Plaintiff's counsel discounted the value of the class claims consistent with these risks
26 and carefully weighed the likelihood of the class receiving substantially greater benefit if
27 the litigation continued. Plaintiff's counsel concluded – in light of the very real risks
28 discussed above – settlement on the proposed terms, without further prolonged and costly

1 litigation, was in the best interests of the class and also that the settlement of the PAGA
2 claims is meaningful and further the purposes underlying the PAGA statutory scheme.
3 [Crosner Decl., ¶ 35.]

4 Even on a risk discounted basis, the settlement will provide significant monetary
5 compensation to the Class Members for their unpaid wages and other damages while
6 eliminating the risks of losing class certification, obtaining a lower amount at trial with
7 greater costs, or losing altogether. Following the deduction of attorney's fees and costs,
8 the enhancement payment, the PAGA penalty payment, and settlement administration costs,
9 this results in a Net Settlement Amount of approximately \$607,000 for the Class Members,
10 while the SAG Members will share \$50,000 in civil penalties with no impact to their
11 potential individual claims against Medical Solutions. As noted, the settlement will result
12 in an average share of approximately \$795 for the Class Members, based on approximately
13 \$34 per work week (net), and about \$38 in civil penalties for the SAG Members. Further,
14 these amounts are comparable to other settlements secured by Plaintiff's counsel in matters
15 alleging similar claims. [Crosner Decl., ¶ 36.] Importantly as well, the proposed settlement
16 is non-reversionary and will provide immediate benefits to the Class Members without a
17 claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class
18 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
19 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or
20 cumbersome claims process may indicate lack of fairness).

21 In light of the many and significant obstacles Plaintiff faces in pursuing her claims,
22 Plaintiff submits the overall size of the recovery is fair. Further, the significant individual
23 settlement awards and the fact that the settlement is entirely in line with other settlements
24 involving similar claims both support a finding the proposed settlement is fair, adequate,
25 and reasonable. Accordingly, this factor weighs in favor of approval as well.

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1 **5. The Extent of Discovery Completed and the Stage of the**
 2 **Proceedings**

3 Prior to reaching this settlement, Plaintiff's counsel conducted both formal and
 4 informal discovery and investigation into the claims alleged, including reviewing and
 5 analyzing handbooks and other policy documents, reviewing and analyzing time and payroll
 6 data produced by Defendant, and preparing a damages analysis with the assistance of
 7 consulting experts. [Crosner Decl., ¶¶ 5-6.] Plaintiff's counsel's calculations are based on
 8 reliable data including class size (total current and former employees) and the number of
 9 aggrieved employees, work week/pay period data, average hourly rate of pay, time records,
 10 payroll records, and extensive policy documents. In addition, Plaintiff's counsel has
 11 investigated the applicable law regarding the claims and defenses to the claims asserted in
 12 the litigation. Thus, Plaintiff and her counsel were able to act intelligently and effectively in
 13 negotiating the proposed Settlement. Plaintiff's counsel has sufficient familiarity with the
 14 facts of the case to make an informed decision about the fairness of the settlement. [Crosner
 15 Decl., ¶¶ 5-6, 8.]

16 **6. The Experience and Views of Counsel.**

17 Plaintiff's counsel has extensive experience in wage and hour class actions and are
 18 well-qualified to prosecute this action. [Crosner Decl., ¶¶ 37-43.] Based on this combined
 19 experience, and after factoring in the risks articulated above, Plaintiff's counsel are confident
 20 the proposed settlement accords with the prevailing sense of "fair, adequate, and reasonable"
 21 in both the class action and PAGA contexts, and that the PAGA-only component of the
 22 settlement furthers the purposes underlying the PAGA statutes.

23 **7. The Reaction of the Class to the Settlement.**

24 To date, no class member has expressed any opposition to the settlement. [Crosner
 25 Decl., ¶ 44.] In any event, class members will have the opportunity to express any opposition
 26 during the notice period. Similarly, the LWDA has been provided with the Joint Stipulation,
 27 this motion, and given notice of the preliminary approval hearing. [Crosner Decl., ¶ 45;
 28 Exh. E.]

1 **8. No Collusion Between the Parties or their Counsel.**

2 As discussed above, the settlement is the product of adversarial, non-collusive, and
 3 arm's-length bargaining between experienced counsel, facilitated by a well-respected
 4 mediator. [Crosner Decl., ¶ 7.] The use of a mediator experienced in the settlement process
 5 tends to establish that the settlement process was not collusive. See, e.g., Satchell v. Fed Ex.
 6 Corp., 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007). There are no undisclosed side
 7 agreements between the parties or their counsel. [Crosner Decl., ¶ 7.]

8 **IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
 9 **CLASS**

10 Per Section IV.B. of the Joint Stipulation, the parties jointly request certification of a
 11 Fed.R.Civ.P. 23(b)(3) opt-out class for settlement purposes only, consisting of all persons
 12 employed by Defendant in California as non-exempt employees, including but not limited
 13 to traveling healthcare professionals, who worked an assignment at any facility operated by
 14 Sutter Health or a related company during the Settlement Class Period (May 10, 2014 to the
 15 date of preliminary approval). The Class meets the requirements for class certification under
 16 Fed.R.Civ.P. 23(a) and (b)(3).

17 First, the Class consists of at least 774 members. [Joint Stipulation, § V.A.1.a.] In
 18 Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001), the court observed that if a class
 19 exceeds 40 members, the numerosity requirement is met. Further, the class members are
 20 ascertainable by reference to Defendant's personnel and payroll records. [Id. at § IV.E.]

21 Second, Plaintiff contends there are common questions of fact and law, and these
 22 predominate over individual questions. These common questions include: (1) Defendant's
 23 common policies and practices for failing to pay wages due by allegedly "auto-deducting"
 24 for missed meal periods; (2) Defendant's common policies and practices regarding meal
 25 periods, including whether whether second meal breaks were required, whether Defendant
 26 obtained required written meal period waivers, and whether Defendant paid premium wages
 27 in lieu of missed or non-compliant meal periods; (3) Defendant's common policies regarding
 28 rest periods and payment of the required premium wages in lieu of missed or non-compliant

1 rest periods; and (4) whether these alleged violations support the derivative claims for
 2 improper itemized wage statements, waiting time penalties, and unfair competition. These
 3 common questions predominate over such individual questions as a class member's measure
 4 of damages. [Crosner Decl., ¶ 51.]

5 Third, Plaintiff's claims are typical of those of the other class members. Ms. Buford
 6 is a former Medical Solutions non-exempt "Travel Nurse" who worked multiple contracts
 7 in California during the relevant time period at medical facilities owned by Sutter Health,
 8 and who believes she was injured by Defendant's common practices alleged above. [Crosner
 9 Decl., ¶ 52; Buford Decl., ¶¶ 2-3.]

10 Fourth, Ms. Buford is an adequate class representative because she has retained
 11 competent counsel and she has no interests adverse to those of the class. [Crosner Decl., ¶¶
 12 37-43.]

13 Finally, a class action is superior to other procedural mechanisms for resolving these
 14 claims. Because of the size of the class, individual joinder is impractical. A class action
 15 will permit a large number of similarly situated individuals to resolve their common claims
 16 in a single forum without unnecessary expense, duplication of effort, and burden on the
 17 judicial system. [Crosner Decl., ¶ 53.]

18 **V. CAFA AND PAGA NOTICE**

19 Per Section IV.D of the Joint Stipulation, Defendant will serve all notices required
 20 by 28 U.S.C. section 1715 within ten days of the filing of this motion. Additionally, prior
 21 to filing this motion, Plaintiff provided notice of the proposed settlement of the PAGA
 22 claims and the approval hearing to the LWDA. [Crosner Decl., ¶ 45; Exh. E.]

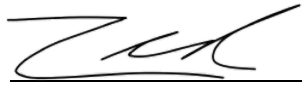
23 **VI. CONCLUSION**

24 For the foregoing reasons, the parties jointly request that the Court preliminarily
 25 approve the proposed settlement, conditionally certify the proposed Class for settlement
 26 purposes only, approve the notice forms attached as Exhibits A-C to the Joint Stipulation,
 27 and set a final approval hearing for June 9, 2020, or on the Court's first available date
 28 thereafter.

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Dated: December 10, 2019

CROSNER LEGAL, P.C.

By: 
Michael Crosner
Zach Crosner
J. Kirk Donnelly
Attorneys for Plaintiff

PROOF OF SERVICE

Buford v. Medical Solutions, L.L.C.

Northern District (Oakland) Case No. 4:18-cv-04864-YGR

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 433 N. Camden Dr., Ste. 400, Beverly Hills, CA 90210.

On December 10, 2019, I served true copies of the following document(s) described as

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

DECLARATION OF ZACHARY M. CROSNER IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

JOINT STIPULATION OF CLASS SETTLEMENT AND RELEASE BETWEEN PLAINTIFF AND DEFENDANT

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal

PROOF OF SERVICE

Service or an affiliate thereof, at or near Phoenix, Arizona.

1 ☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and
2 submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal
3 (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth
4 herein. I caused an envelope containing the documents to be placed for collection and mailing and
5 to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s
6 ordinary business practices. I am readily familiar with our business practices and the business
7 practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
8 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
9 course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with
10 any and all delivery fees to an authorized courier or driver authorized by the express service carrier
11 to receive documents.

12 I declare under penalty of perjury under the laws of the United States of America that the foregoing
13 is true and correct and that I am employed in the office of a member of the bar of this Court at
14 whose direction the service was made.

15 Executed on December 10, 2019, at Los Angeles, California.

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Maria Monterrey

PROOF OF SERVICE

SERVICE LIST

Buford v. Medical Solutions, L.L.C..

Northern District (Oakland)

Case No. 4:18-cv-04864-YGR

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